



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: JUNE 05, 2023

IN THE MATTER OF:

Appeal Board No. 628819

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective November 3, 2022, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by THE NEW YORK PUBLIC LIBRARY prior to November 3, 2022 cannot be used toward the establishment of a claim for benefits. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances on behalf of the claimant and the employer. By decision filed March 23, 2023 (), the Administrative Law Judge overruled the initial determination.

The employer appealed the Judge's decision to the Appeal Board.

Our review of the record reveals that the case should be remanded to hold a hearing. We note that in addition to the reason set forth in the initial determination of misconduct, the employer's decision to terminate the claimant's employment was also based on the claimant's alleged deliberate disregard of her usual assigned tasks as a Children's Librarian, insofar as they related to the Drag Queen Story Hour, due to her personal beliefs. These include not placing the event on the Library calendar, as instructed; not printing out, posting and distributing fliers for the program; changing her schedule to avoid participating in the program; purposely excluding books with LGBTQ+ characters in the Children's Storytime Programs; and declining to commit to performing all of her usual duties relative to Drag Queen Story

Hours and similar programs in the future. The parties are on notice that the Board has determined that there is good cause for the Administrative Law Judge to consider all of the foregoing in deciding whether the claimant's actions constituted insubordination and/or violation of the employer's antidiscrimination policy.

The employer is directed to produce Jill Rothstein and Ashley Dalle, who shall be questioned in detail about the circumstances that led to the claimant's discharge and whether the claimant's actions flouted her usual duties and/or job description.

The parties may produce any other relevant witnesses or documents. The Judge may take any further testimony and evidence necessary to decide the case.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge is rescinded; and it is further

ORDERED, that the case is remanded to the Hearing Section to hold a hearing upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

RANDALL T. DOUGLAS, MEMBER